

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VRENDA D. GARCIA,

Plaintiff,

– *against* –

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

**OPINION & ORDER**

21 Civ. 1895 (ER) (RWL)

RAMOS, D.J.:

Vrenda D. Garcia brought this action to seek review of the final decision of the Commissioner of Social Security, denying her Supplemental Security Income (“SSI”) benefits under the Social Security Act. Before the Court is a Report and Recommendation (“Report” or “R&R”) from the Honorable Robert W. Lehrburger, United States Magistrate Judge. *See* Doc. 30. For the reasons stated herein, the Court adopts Judge Lehrburger’s recommendation to grant Garcia’s motion, deny the Commissioner’s cross-motion, and remand the case for further proceedings.

**I. BACKGROUND**

Garcia first filed an application for SSI benefits on March 9, 2018, alleging that she was entitled to benefits on the basis of her learning disability, mental delay, forgetfulness, slowness in doing things, inability to move fast, and inability to speak and express herself clearly. Doc. 13 at 64–65. Following an initial denial, she requested a hearing before administrative law judge (“ALJ”) John Carlton, which was held on May 3, 2019. *Id.* at 43, 75, 82. The ALJ issued an adverse decision on April 14, 2020, finding that Garcia was not disabled under the meaning of the Social Security Act and was capable of performing work that exists in significant numbers in the national economy. *Id.* at 37–38. Garcia then appealed the determination to the Social

Security Administration's Appeals Council, which denied her request for a review on January 6, 2021. *Id.* at 4–8.

Garcia filed this action on March 4, 2021, which the Court ultimately referred to Judge Lehrburger. Doc. 1. The parties cross-moved for judgment on the pleadings on February 1, 2022 and April 18, 2022. Docs. 19, 25.

Judge Lehrburger issued an R&R on August 11, 2022, recommending that Garcia's motion be granted and that the action be remanded. Doc. 30.<sup>1</sup> The Report included notice to the parties that any objections must be filed within fourteen days. *Id.* at 48. No objections have been filed. The parties have therefore waived their right to object to the Report. *See Dow Jones & Co., Inc. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF), 2014 WL 5002092, at \*1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Caidor v. Onondaga Cty*, 517 F.3d 601, 604 (2d Cir. 2008)).

## II. LEGAL STANDARD

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95 Cr 1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has

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<sup>1</sup> The Report based this determination on the ALJ's (1) failure to account for Garcia's inability to use public transportation, (2) failure to consider and develop the record with respect to Garcia's likely absences, and (3) error in finding there was substantial evidence that Garcia possessed math skills. Doc. 30 at 28–35.

timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

### III. DISCUSSION

No party has objected to the R&R. The Court has reviewed Judge Lehrburger's thorough and well-reasoned Report and finds no error, clear or otherwise.

### IV. CONCLUSION

The Court therefore adopts Judge Lehrburger's Report in full, for the reasons stated in the Report. Accordingly, Garcia's motion for judgment on the pleadings is GRANTED and the Commissioner's cross-motion is DENIED, and the case shall be remanded for further proceedings consistent with the Report. In addition, the parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 Civ. 1104 (DLC), 2008 WL 3852051, at \*3 (S.D.N.Y. Aug. 15, 2008) (citing *Male Juvenile*, 121 F.3d at 38).

The Clerk of Court is respectfully directed to terminate the motions, Docs. 19 and 25, and to close this case and enter judgment consistent with this Order.

It is SO ORDERED.

Dated: August 30, 2022  
New York, New York



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EDGARDO RAMOS, U.S.D.J.